

Case No. 08CV777  
In The United States District Court  
Northern District Of Illinois

**FILED**

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MICHAEL W. DOBBINS  
 CLERK, U.S. DISTRICT COURT

Darryl R. Duncan  
Plaintiff-Appellant

vs.  
Warden Johnson  
Defendant-Appellee

08CV777

Appeal From The Circuit Court For The 19<sup>th</sup>  
Judicial Circuit, Lake County, Illinois

and  
The Appellate Court Of Illinois  
Second Judicial District

and  
The Illinois Supreme Court Of Appeals

"Memorandum In Response To Why Petition For Writ Of  
Habeas Corpus Shouldn't Be Dismissed"

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Pro se

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The Plaintiff-Appellant is Pro se  
Seeking Appointment Of Counsel  
and Requesting An Oral Argument.

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# Points Relied Upon For Reversal

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Jurisdictional Statement

This is a, "Memorandum In Response Why Petition For writ Of Habeas Corpus Shouldn't Be Dismissed" from a judgement order entered on April 24, 2008 to show cause. The petitioner's, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> amendment rights were violated.

The date on which the highest state court decided on this case was November 1, 2007. A copy of that decision appears in the appendix as exhibit A.

This court has jurisdiction pursuant to, Rule 8, Rules Governing Section 2254 cases.

The record on appeal for, case no: 105035, from the Illinois Supreme Court, The appeal from the Second Judicial District Court Of Appeals covers the period from the commencement of the proceedings through the "Illinois Supreme Court". For clarity citations to the common law records and reports of proceedings will be preceded by either, Circuit Courts Records, case number # 04CF3742, at Lake County.

Also Appellate Court case # 07-0107.

## Opinion And Proceeding Below

On March 17, 2005, the petitioner was found guilty of Possession Of A Stolen Motor Vehicle and a Straight-Conversion entered. Petitioner was subsequently sentenced to a Nine-year prison term upon his conviction. He appealed this conviction to the Illinois Appellate Court - Second District, on August 8, 2005, the Court delivered its opinion in said appeal, affirming the judgement of conviction and sentence. A petition for "Rehearing On Appeal" was filed on June 7, 2007 and denied on July 5, 2007. Also note, that the petitioner is to receive 35 days for time served, that was order modification from Appellate Court on May 18, 2007. The petitioner filed an appeal on or about July 13, 2007 in the Illinois Supreme Court and the Illinois Supreme Court denied petition on September 26, 2007, the mandate of the Illinois Supreme Court was November 2007. The petitioner did file a post conviction and it was granted for an appeal mind you, the appellate defender office files to be relieved as counsel both times by filing a Finley. On the first post, they told me to withdraw so I did and on the second post they filed Finley yet they did not do there job. The Appellate Court denied my reply to Finley then the appellate attorney tells me to file again and they will take 6 months?! Now, I'm at a facility that won't give law library access for research etc., I even went to see for asking and to even file a complaint in the U.S. Southern District, case number #08-315-JP6. Still this appeal from the conviction for 9-years and Straight-Conversion for Aggr. Fleeing and Eluding, the petitioner challenges the decision. This issue is not pending in any other court.

## STATEMENT OF FACTS

The petitioner was stopped and arrested by Officer Lawrence, without a description given of a person allegedly running from a stolen vehicle. The description was of a dog barking see Page 21 pa. 23 & 24 and Page 22 pa. 9-14 all from trial transcripts on March 13, 2005.

The indictment is frivolous; they say in the indictment that the van was registered yet if you review Exhibit G and Exhibit E, it shows that the petitioner was given a ticket for driving a unregistered vehicle.

The indictment also does not state a vin number, or year, or Model of the stolen van; see indictment, Exhibit G and Exhibit E, shows that the vans are two different vehicles, one is a 350 model and the recovered van was a 150 Econoline. Also see Exhibit F, the picture that shows the 150 Econoline. The petitioner was on trial for a 350 Model van, yes there are discrepancies. Also review the recovered vehicle there is no vin number and the models are different see Exhibit F.

The company who allegedly owned the vehicle could not even show proof like the registration and/or an original title see page 41 pa. 15 and Page 42 pa. 12 and Page 42 Pa. 3-6, all from the trial transcripts on March 17, 2005. Also seen the company did have proper records they should be charged with a class 2 Felony.

The petitioner was not even in the said stolen vehicle if you review the police report, Exhibit E, the prints are no comparison. If you review the trial transcripts from March 17, 2005, a officer Rinaldi testified that the petitioner got out from under the steering wheel crawled over to the passenger side and climbed on top of the vehicle without gloves on see page 30 pa. 8?

Also officer Rinaldi stated on March 17, 2005 see page 35 pa. 9 & 10, that the license plates were not register, making indictment frivolous.

Also see where it was a Diane Dixon-Wise who had Exclusive Possession of the stolen motor vehicle, yet her name



is not on the indictment, she was not even arrested, she didn't come to trial and she did not make a written statement? See the Exhibit E and Page 79 pa. 1-24 and Exhibit 6, Diane Dixon Wise name should be on the indictment not the petitioners.

There were two people who's name was not on the witness list see Exhibit D, there names are Ms. Donovan and Ms. Rogers this is not proper and should grant a new trial.

The petitioner has a straight conviction for Fleeing and Eluding the police that should be voided due to incomplete sentence, not to mention that the officer stated on March 17 2005 that the petitioner did not have on any eye glasses, see Page 35 pa. 20 also review the petitioners drivers record that shows he has to have glasses to operate a vehicle yet officer Rinaldi says that the petitioner was driving 100 mph on a busy street yet he didn't hit anything shows perjury, the act is impossible. The police report and the indictment lack in certainty.

On March 17 2005 in the trial transcripts a Ms. Rogers takes the witness stand and states that the petitioner was not the criminal, because she seen the criminals and called the police on October 9 2004 and she followed the van until the police took up the pursuit see Page 70 pa. 18-20. Also review a citation she was the complainant and did not sign a complaint against the petitioner.

The petitioner can't be sentenced on assumptions or being misrepresented by "Ineffective Counsel". The petitioner filed 3 motion asking for proper counsel in the Circuit Courts and was denied, see The Appellate Defenders Direct Reply Brief.

The petitioner asked the Appellate Courts for proper counsel and was denied yet, had the Appellate Attorney Paul Rogers filed in effective Counsel in his Direct Brief and have he put down the people who took the witness stand, when there name was not on the witness his motion would have been granted. Not to mention the fact that the Models in the vans are different. This makes him and the Public Defender ineffective, and violates the petitioners 6th amendment.

Also, the petitioner has a Mental History and who knows the components of the petitioner before trial there was no mental evaluation done before trial. Also the petitioner has to be able to assist in trial, now the petitioner see the Crystal Clear errors that were made. Yet the petitioner is not an attorney and is in need of help and yes the court abused it's Decretion, etc. Also 8th amendment excessive bail see Page 46 507 transcript.

Further more, the petitioner did exhaust all state remedies see exhibit A showing the Illinois Supreme Courts decision on September 26, 2007, the petitioner's petition was denied, the case number #105035 yes, it was all over November 6, 2007 as mandated.

Also see exhibit B showing how the Appellate court denied Supplemental Brief, Rehearing on Appeal and denied Appeal and the post conviction hearing all exhibits again are marked exhibit B. Yes the petitioner filed a post conviction and again the appellate defenders filed a Finley to be dismissed as counsel and the Appellate Court let them knowing that there are Constitutional Rights being violated yet the Appellate Court knew that the petitioner had ineffective counsel from day one, and even in the exhibits shown it's two different vehicles. There is, No, case pending in any other court on this issue, the petitioner was even told by Appellate defender that if he files another post conviction he will lose 6 months good time. The Appellate Courts, the Circuit Court and the Appellate defenders office are all in cohorts together. I was not in a stolen van and I don't know anything about it and I have been telling the same story for almost 4 years and I pray that this court responds! The evidence don't even add up, clearly showing a malicious prosecution. Also see exhibit I, showing where petitioner filed a post conviction January 9, 2007 with all evidence showing innocence yet she states in number 5, that this issue could have and should have been raised on appeal, mind you all issues started with her and here I still sit bogus!



### ARGUMENT

1. Appellate Review Showing "No Probable Cause for The Stop or Arrest."  
 On or about October 19, 2006, the petitioner did file a "Supplemental Brief" with the appellate court and it was denied. In the "Supplemental Brief" it clearly states that the petitioner's 4<sup>th</sup> amendment right was violated, the petitioner presents Terry v. Ohio, cited as 273 U.S. Dec. 129 (U.S. App. 3 Dist. 2003). The interrogation during "Terry Stop" must be reasonably related in scope to the justification for initiating the stop. However, if you review the police reports and the trial transcripts it will clearly show you that the petitioner was not only stopped he was arrested by a "North Chicago Police Officer Lawrence" yet this officer did not even have a description of, whom his co-workers were allegedly chasing from a stolen motor vehicle, yet he arrested the petitioner for the crime? Also Officer Lawrence did not make a police report nor did he come to trial. The date of arrest was 10-9-04 at per say 11:00 am, the sun was shining and many people were outside but to mention the fact that the petitioner was in the "City of Waukegan" not "North Chicago". They say the only description given over the police radio was, the description of a dog barking! The petitioner is not a dog. Standard of Review: Whether the trial court and the appellate court properly applied the statute, arresting a citizen where there is "No Probable Cause" to arrest. The stop and arrest is a matter of law and is therefore subject to "de novo review". Jones v. Village Park 815 F. Supp. 249 is the restoration of liberty without probable cause. The courts are looking over the ultimate issue, at hand, the petitioner was not a suspect, nor did he have any warrants or parole or probation pending. The petitioner was arrested not detained by officer Lawrence. Yes, this violates the petitioner's 4<sup>th</sup> amendment right, to liberty, to walk down the street, which he has a right to do anywhere in the U.S., this is a right, not a privilege. Accordingly, the "Honorable Court" should reverse sentence, and vacate the petitioner's sentence. Also the "Straight Conviction", the petitioner's 4<sup>th</sup> and 14<sup>th</sup> amendment rights are violated.

## 2. The Courts Erred In It's Discretion The Petitioner's Due Process Of Rights And Sentencing.

The 5<sup>th</sup> amendment, governs a citizens rights, for failure of due process. An "Indictment and Information Complaint", which lacks necessary certainty to charge offense is void, and vulnerable to attack at any time, including on appeal, see: "People v. Heard (1971), 47 Ill. 2d 501, 505, 266 N.E. 2d 340, 343". Again, the petitioner did file a "Supplemental Brief" in the appellate court with this information enclosed on or about, October 19, 2006 and it was denied. Also the petitioner did file, Post Trial Motion's with this information and it was denied as well. The state alleges in the "Indictment", that, the petitioner was in possession of a "Blue Van" of Habitat For Humanity with an "Illinois Registration" number of 20411CV, knowing it to have been stolen, in violation of 625 ILCS 5/4-103(a)(1) contrary to the statutes in such case made and provided, and against the peace and dignity of the "People Of The State Of Illinois," yet according to case law "625 ILCS 5/1-171.01-Remitter, is any person who owns a vehicle has to pay to show the, "State Of Illinois," the taxes paid or vehicle license, and registration fees, none of this was done at the "Indictment Hearing" or at "Trial". Also a Officer Rinaldi stated on the witness stand on "March 17, 2005, that he ran the plates on the said vehicle and they came back not registereed, this officer also wrote the petitioner a ticket "No Registration", on a vehicle the petitioner never was in, which

makes the said "Indictment," lack in it's certainty by saying the van was registered. Also according to "725 ILCS 5-111-3-5b", a uniformed ticket has to be signed by a officer and a complainant. The complainant has to sign to prevent perjury under penalties as provided by law for false certification pursuant to "735 ILCS 5/1-109" of the code of "Civil Procedure" and none of this was done at the "Indictment Hearing" or "Trial" to show cause, so without a signature from the complainant this also makes the indictment lack in it's certainty, because just the officers signature doesn't show anyone getting a last. The officers can't say that they did not come in contact with the complainant on 10-9-04, because! Ms. Rogers called the police to report that she was following the said stolen vehicle, she was also the one who claimed the stolen vehicle after it was dusted for finger prints and drove it away, she also stated at trial on the record on "March 12, 2004" that she even seen the criminals that possessed the stolen vehicle and pointed at the petitioner and clearly stated that ~~I~~ was not the one. This witnesses name was not even on the witness list! Also the indictment lacks in it's certainty, the Make, Model and Vin number, of the alleged stolen motor vehicle that was reported stolen the first day was 10-8-04, because! If you review the "Supplemental Discovery" that was submitted, "Narrative," October 8, 2004 at 14:22, case No. 20040063963, Created by, Paulost, on 10-8-04, 2:22pm a 1990, Make: Ford, Model: 350, Style: Van, Color Top: Blue, License # 204116V, Serial # / Vin 1FTDE14YTLHA8604. Now review the recovery date of the alleged stolen vehicle; Supple-

mental Narrative; October 9, 2004, 10:57, case No. 20040006396, created by; Furlow, on 10-9-04, 10:57 a.m., in reference to "Recovered Stolen Auto, this officer went to location and took "Eight Digital Photos," then dusted a blue 1990-Ford Econoline 150 van, Bearing Ill. plates of 20411LV, for latent finger prints with a negative result of any comparison, note: that it is in the trial transcripts that the petitioner was said to have gotten out this vehicle and climbed over the top and jumped a fence with "No gloves on." The reports "Models," are two different vehicles and there was "No Vin Number" taken on 10-9-04 so, this makes the "Indictment Frivolous." The court alleges in the "Indictment" that the petitioner was in possession of the said stolen motor vehicle, yet, the person that was caught with "Exclusive Possession" was a Ms. Diane Dixon Wise and without her we don't know if the vehicle was loaned, stolen or what! She did not make a written statement, she did not come to trial and she was not even arrested. In "People v. Malone (5th Dist. 1971), Ill. App. 3d 860, 863, 275 N.E. 2d 236, 238," the trial court held that the possessor is guilty of the wrongful taking, yet this indictment shows the petitioner's name.

#### A. The Court Erred In Finding The Petitioner Guilty Of Aggravated Fleeing And Eluding The Police Due To Absence Of Sentence.

The petitioner was found guilty of "Aggravated Fleeing and Eluding" "The Police." There was a "Straight Conviction" with "Judgment Ordered For Court Cost," yet there was "No

Sentence Imposed" see "People v. Rozenc Burvage and Allen Redmond 269 Ill. App. 3d 67, 645 N.E. 2d 455" so, the "Aggravated Fleeing and Eluding", should be void. The "Supreme Court Rule" 604(a) 73 Ill. 2d R. (1604), limits the scope of the "State's" ability to appeal to trial courts dismissing charges, arresting judgments, quashing warrants, and suppressing evidence. Therefore, the state cannot appeal a mere conviction to seek an order for the imposition of a sentence. The petitioners "Drivers License" is revoked, the case No. 249732, yet he was not even in this alleged stolen vehicle. The finger prints show, "No Comparison", "The complainant Ms. Rogers states it was not the petitioner. The petitioner is noted on his "Drivers License" that he has to wear them yet the police states the petitioner was driving 100 m.p.h without eye glasses without hitting anything, this is impossible. No finger prints alone show that this is a Prima Facie issue of Forensic Evidence.

"225 ILCS 5/116-3. Standard of Review: Whether the trial court and the appellate courts properly applied the statutes, "Due Process" were there any grounds to go to trial and/or sentence the petitioner is a matter of law and is subject to de novo review. According to the "Thirty-Second Annual Review Of Criminal Procedure" - "Improper Considerations In Determining Sentence. 2074 see "U.S v. Pugliese 805 F. 2d 1117, 1124 - 2d cir. 1986" due process requires that petitioner not be sentenced based on materially untrue assumptions or mis information. Yes, this violates the petitioners 5<sup>th</sup> amendment rights, and shows that due process



was not given to the petitioner which is a right not a privilege. The 14<sup>th</sup> amendment states all law applies to citizens.

Accordingly, this Honorable Court should vacate the petitioners sentence and vacate the "Straight Conviction" against the petitioners "Driver Licence". This information shows two different vehicles. Also the "Indictment is construed.

### 3. The Courts Erred In Denying The Petitioner's Motion's For Appointment Of Counsel Other Than Appellate Defenders Office And The Public Defenders Office. - (Ineffective Counsel).

The "6<sup>th</sup> amendment right" which governs a citizen's right for proper counsel. The petitioner filed a motion along with his "Supplement Brief", requesting different counsel with the Appellate court on or about, October 19, 2006 and was denied. The petitioner filed several motions in the Circuit court, requesting different counsel and was denied. The motions filed where, "Ineffective Counsel Motions", all were denied yet, the petitioner has the right to proper counsel that is meaningful, it has to be more than a sham or pretense, it must be effective; more over, the statutes under "Illinois Law" upon which that motion was predicated, authorized that court to appoint counsel other than the Appellate Office or Public Defender Office. Where the petitioner or accused will be prejudiced with the, "States Appointed Counsel", see; Illinois Revised Statutes (1977), Section 5-6-4-34, Chapter 34, on "Appointment of Counsel". The "Public Defenders Jan Kasper" failed to file any "Pre-Trial Motion" and "Review all the information before trial". This attorney should have filed a motion showing the court that the "Models of vans are different and one has a vin number showing yet the other one does not. The van that was reported stolen on 10-8-04 is a 1990, Ford, Model: 350, with vin

number and IL Plates that were "Not Registered" and on 10-9-04 the van that was recovered was a 1990, Ford Model; 150 Econoline, this van was not reported stolen on 10-8-04. The pictures of this, "Ford 150 Econoline" were submitted as evidence, yet the Public Defender - Tan Kasper fails to object, shows he was ineffective and did misrepresent the petitioner and misinform the "Judge." A defendant is entitled to have his guilt or innocence determined solely with reference to the crime charged. "People v. Gregory, 22 Ill. 2d 606, 603, 177 N.E. 2d 120 (1961)." Accordingly, it is well settled that evidence of other offenses unrelated to the crime for which a defendant is on trial is incompetent. "People v. Goodwin, 69 Ill. App. 3d 347, 349, 25 Ill. Dec. 777, 387 N.E. 2d 433 (1979)." However, it is also well settled that a party who "opens the door" on a particular subject is barred from objecting to questioning based upon the same subject. "People v. Griffiths, 112 Ill. App. 3d 322, 328, 68 Ill. Dec. 73, 445 N.E. 2d 521 (1983)." The failure of Tan Kasper, not informing the "Judge" of the discrepancy about the "Models" in the vans being different, making it two different vehicles, takes from the ultimate issue that! The van, the petitioner was on trial for was not, the van that was recovered on 10-9-04 and the attorney Tan Kasper knew the defendant could not be convicted with this evidence. Also, the Public Defender - Tan Kasper was very ineffective by not objecting to a Mrs. Donovan who got on the witness stand yet her name was not on the witness list. This witness came to trial with a copy of a van title not an original copy, also, Mrs. Donovan did not know if the van was register or insured, not to mention she

had know proof of ownership, No vin number were shown  
 etc. Also, the Public Defender - Tan Kasper was very ineffective  
 by not objecting to a Ms. Rogers, who got on the witness  
 stand yet her name was not on the witness list. This witness  
 did testify that the petitioner was not the criminal due to  
 the fact she had seen them. Now, Ms. Donovan and Ms. Rogers  
 were the states witnesses. "People v. Loggins, App. 1 Dist. 1974,  
 Ill. App. 3d 655, 316 N.E.2d 274". The state has to comply  
 with this rule to allow the defendant time to prepare be-  
 fore trial. Also the Public Defender - Tan Kasper failed to address  
 the judge and let her know that the defendant had a "Mental  
 History" yet it's his job to review the defendant's back ground  
 before trial to see if the defendant is fit to stand a trial. The  
 defendant had showed signs of incompetents by arguing with  
 his attorney in front of the judge and not seeing the "Crystal  
 Clear" errors that is being presented to this court in this  
 motion, even the judge committed on the defendant's demeanor.  
 The state of mind before trial is a factor and the ultimate  
 issue, because, who knows, what the defendant-petitioner  
 was capable of, there was "No Mental Evaluation done  
 before trial. Had the counsel been effective, the petitioner  
 would not be serving a 9-year sentence. Yes, there is bona  
 fided doubt that the petitioner was fit. "725 ILCS  
 5/104-11(a) (West 2004). The petitioner is suppose to be  
 competent enough to assist his attorney in trial, review  
 Drape v. Missouri, 420 U.S. 162, 172, 95 S.Ct. 896, 904, 43 L.Ed.  
 2d at 822, also "Pate v. Robinson, 383 U.S. 375, 378, 86  
 S.Ct. 836, 838, 15 L.Ed. 2d 815, 818 (1966). This P.D. had the

petitioner's records so, there's "No Denying" his actions. Also Public Defender - Tankasper was ineffective by not objecting to his co-worker Shipley taking the witness stand as a character witness for the State. This hearsay testimony in which was not relevant factor when imposing a sentence. "People v. Gene R. Bilski 333 Ill. App. 3d 808, 776 N.E. 2d 882. The petitioner believes that Shipley's testimony made this court even more biased, because this witness stated that he chased the petitioner before in a stolen vehicle and got hurt? If you review the record the case that Shipley refers to was "Dismissed" several years before hand. The judge said she takes Shipley's testimony as true, yet the case was dismissed, it has to show relevancy, there was none. The Appellate Attorney - Paul A. Rogers knew all these issues and yes there are more, so please review the record. The petitioner asked the appellate attorney to file an ineffective counsel and the appellate attorney refused stating he was not going to do it for me, yet the record is clear, that I had improper counsel so, the petitioner feels sense this Appellate Attorney doesn't raise issues that he knows exist that makes him ineffective as well. Again, the petitioner asked for different counsel in the appellate court and about October 19, 2007. The state appointed attorney's are not telling the story like it is and it seems like they are hiding ultimate issues, not to mention misinforming the judge's. The petitioner has had existing issues, yet the Appellate court denies his "Supple Brief" and motion asking for



different counsel. Not to mention the petitioner was told to file a "Post Conviction", for existing issues already on the record and yes, it was denied in the "Circuit Court", a appeal was filed yet the appellate court files a order for a continuance, until January 21, 2008 for all briefs, the case number 2-07-0107. Furthermore, the appellate court denies the attorney's "Direct Brief", this is unfair to the petitioner. The court's have seen the petitioners "Supplemental Brief" now the appellate attorney is saying he is going to file for another continuance, by then the petitioner will be done serving the 9 year sentence. It's obvious that the appellate court needs help and the public defender attorney and the appellate attorneys are not effective. The Circuit Courts even state that, the petitioner is owed 35 days for time served and he has not received it as of yet? **Standard of Review** whether the trial court and the appellate properly applied the statutes; "Ineffective Counsel" were there are many grounds showing counsel was not proper is a matter of law and is subject to de novo review. The 6th Amendment guarantees reasonable competence not perfect advocacy judged with the benefit of hindsight; *Massaro v. U.S.*, 2003, 123 S.Ct. 1190, 538 U.S. 500, 155 L.Ed. 2d 714 see; § 394.1a. Even to warrant a new trial, such evidence must have been in existence at time of the trial; *U.S. v. Kalb*, 6th Cir. 2003, 324 F. 3d 720. Also the attorney's, that were appointed are misinforming the judges and the petitioner should not be sentenced for that, not to mention being held any longer see; *U.S. v. Pugliese* 805 F. 2d 1117, 1124-2d cir 1986- states that the petitioner shouldn't be sentenced on assumptions or/and materially untrue information and mis information. Also the U.S. Supreme Court recently reaffirmed the principle and the state must enforce it; *People v. Wright*, 194 Ill. 2d 1, 251 Ill. Dec 469, 740 N.E. 2d 755 (2000) our Supreme Court found section 5-401.2 of vehicle code "625 ILCS 5/5-401.2 (West 1996) unconstitutional on due process grounds; *Wright*, 194 Ill. 2d at 30, 251 Ill. Dec. 469, 740 N.E. 2d. 755, section 5-401.2 required, if business doesn't have proof they are in violation of a class 2 felony. Also, even when sentences are within the statutory limits of the offense charged, however, such sentences should be reversed if an abuse of discretion is found; *People v. Cox*, 82 Ill. 2d 268, 270, 412 N.E. 2d 216, 218 (Ill. Dist. 1987). Yes, from the petitioners mental history, to Ineffective Counsel motions filed and not honored the court's did abuse of discretion, etc... Also when known petitioner has a mental history counsel should be appointed see; *Marlin v. Erate* cited as 650 F. 2d 885 (1981). Also the 7th Circuit Court adopts appointing counsel see 18 U.S.C. § 3006A (Act) and 21 U.S.C. § 848(g) and Rule 24 also quoting from 28 U.S.C. § 1915 (c)(1).

Conclusion

For the foregoing reasons and reasons in the "Appendix" this honorable court, should reverse the said sentence and vacate the petitioner's 9-year sentence and vacate the Straight Conviction Order Entered for case number's 04CE3749 and 04TR155522 and/or alternate Appoint Counsel and have this case reheard.


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 Vienna, Illinois  
 62995

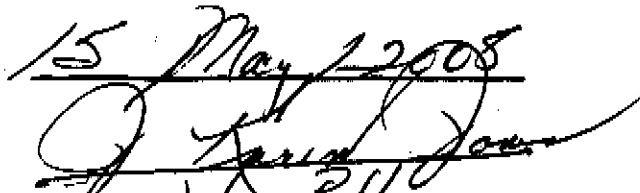
Respectfully Submitted  
 Darryl R. Duncan  
 By: Darryl R. Duncan  
 Prose

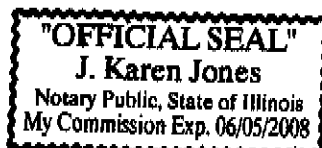
Certificate Of Compliance

I certify that this, "Memorandum In Response To Why Petition For Writ Of Habeas Corpus Should Be Dismissed" conforms to the Federal Rule 8, Rules Governing Section 2254 cases. The appendix is pages excluded from petition.

Darryl R. Duncan B78384  
 6695 State Route #146 East  
 Vienna, Illinois  
 62995  
 618 - 658 - 8377

  
 Darryl R. Duncan - Petitioner

15 May 2008  
  
 Notary Public



*Affidavit*

I declare that this "Memorandum In Response To Why  
Petition For Writ Of Habeas Corpus Shouldn't Be Dismissed  
is true and correct and was prepared by the Plaintiff and  
other inmates due to the fact that the petitioner has a  
Mental History, there is no Paralegal here at Vienna C.C. and  
due to the fact the petitioner is in pain and is suffering  
due to lack proper medical care in I.D.C.

Darryl R. Duncan 828384

6695 State Route #146 East

Vienna, Illinois

62995

618-658-8371

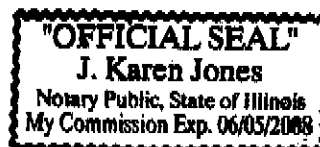
Respectfully Submitted:

Darryl R. Duncan

Plaintiff-Appellant

*Darryl R. Duncan*  
Prose

15 May 2008  
*J. Karen Jones*  
Notary Public



IT OF ILLINOIS  
HE COURT  
ST BUILDING  
INOIS 62701  
35

Sept 26, 2007

Exhibit A

Mr. Darryl R. Duncan  
Reg. No. B-79384  
Hill Correctional Center  
P. O. Box 1700  
Galesburg, IL 61401

No. 105035 - People State of Illinois, respondent, v. Darryl R. Duncan, petitioner. Leave to appeal, Appellate Court, Second District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on November 1, 2007.

PR

RECEIVED  
JUL - 8 2007



STATE OF ILLINOIS APPELLATE COURT SECOND DISTRICT

OFFICE OF THE CLERK  
847/695-3750  
847/695-0092 TDD

APPELLATE COURT BUILDING  
55 SYMPHONY WAY  
ELGIN, ILLINOIS 60120-5558

Appeal from the Circuit Court of County of Lake

Trial Court No.: 04CF3749

THE COURT HAS THIS DAY, 07/05/07, ENTERED THE FOLLOWING ORDER IN  
THE CASE OF:

Gen. No.: 2-05-0758  
Cons. Cases: 2-05-0548

People v. Duncan, Darryl R.

Upon consideration of the Petition for Rehearing  
filed by appellant, the Petition for Rehearing is  
hereby denied.

(McLaren, Byrne, JJ.)  
(O'Malley, J., dissents)

Robert J. Mangan  
Clerk

cc: Thomas A. Lilien, Deputy Defender  
Paul Alexander Rogers  
Honorable Michael J. Waller  
Lawrence M. Bauer, Deputy Director  
Bonnie C. McGrath

Exhibit-B



PR

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DEC - 6 2006



OFFICE OF THE STATE  
APPELLATE DEFENDER  
STATE OF ILLINOIS

APPELLATE COURT SECOND DISTRICT

OFFICE OF THE CLERK  
847/695-3750  
847/695-0092 TDD

APPELLATE COURT BUILDING  
55 SYMPHONY WAY  
ELGIN, ILLINOIS 60120-5558

Appeal from the Circuit Court of County of Lake

Trial Court No.: 04CF3749

THE COURT HAS THIS DAY, 12/05/06, ENTERED THE FOLLOWING ORDER IN  
THE CASE OF:

Gen. No.: 2-05-0548  
Cons. Cases: 2-05-0758

People v. Duncan, Darryl R.

Motion by defendant-appellant, Darryl R. Duncan,  
for review of "supplemental brief" and for  
appointment of counsel other than Office of State  
Appellate Defender. Pro se appellant's motion to  
review "supplemental brief" and state whether said  
"pro se supplemental appeals brief" has any merit  
is denied. Motion for appointment of appellate  
counsel other than Office of State Appellate  
Defender is denied.

Robert J. Mangan  
Clerk

cc: Thomas A. Lilien, Deputy Defender  
✓ Paul Alexander Rogers  
Honorable Michael J. Waller  
Martin P. Moltz, Deputy Director

Exhibit B



*Exhibit B*

STATE OF ILLINOIS APPELLATE COURT SECOND DISTRICT

OFFICE OF THE CLERK

647/695-3750

647/695-0092 TDD

APPELLATE COURT BUILDING

55 SYMPHONY WAY

ELGIN, ILLINOIS 60120-5558

Appeal from the Circuit Court of County of Lake

Trial Court No.: 04CF3749

THE COURT HAS THIS DAY, 11/30/07, ENTERED THE FOLLOWING ORDER IN  
THE CASE OF:

Gen. No.: 2-07-0107

People v. Duncan, Darryl R.

Motion by the Office of the State Appellate  
Defender, counsel for Appellant, for leave to  
withdraw as said counsel. Motion continued until  
thirty (30) days to allow Appellant to file any  
additional matters meritorious on his behalf.

Robert J. Mangan  
Clerk

cc: Thomas A. Lilien, Deputy Defender  
Honorable Michael J. Waller  
Lawrence M. Bauer, Deputy Director  
Darryl R. Duncan

Exhibit B

No. 2-07-0107

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND JUDICIAL DISTRICT

---

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	for the 19th Judicial Circuit,
Respondent-Appellee,	)	Lake County, Illinois,
	)	
-vs-	)	No. 04 CF 3749
	)	
DARRYL R. DUNCAN,	)	Honorable
	)	Victoria Rossetti,
Petitioner-Appellant.	)	Judge Presiding.

---

NOTICE OF FILING AND PROOF OF SERVICE

TO: Mr. Lawrence Bauer, Deputy Director, State's Attorneys Appellate Prosecutor,  
2032 Larkin Avenue, Elgin, Illinois 60123

Mr. Darryl R. Duncan, Register No. B-79384, Hill Correctional Center, P.O. Box  
1700, Galesburg, IL 61401

I, Thomas A. Lilien, Deputy Defender, OFFICE OF THE STATE APPELLATE DEFENDER, Second Judicial District, hereby certify that on November 29, 2007, I filed an original and four copies of a **Motion to Withdraw as Counsel on Appeal Pursuant to Pennsylvania v. Finley** and supporting documents with the Clerk of the Appellate Court, Second Judicial District, and hand-delivered two copies to the State's Attorneys Appellate Prosecutor, and mailed one copy to the Petitioner-Appellant in an envelope addressed as indicated above and deposited in the U.S. mailbox at Elgin, Illinois, with postage prepaid.



THOMAS A. LILIEN  
Deputy Defender  
Office of the State Appellate Defender  
2010 Larkin Avenue  
Elgin, Illinois 60123  
(847) 695-8822

COUNSEL FOR PETITIONER-APPELLANT

1 Illinois or any other jurisdiction of the same or  
2 similar class felony or greater class felony when  
3 such conviction has occurred within 10 years  
4 after the previous conviction. So I find that  
5 based on the conviction from 1998 and a finding  
6 of guilty on this conviction on the charge of  
7 unlawful possession of stolen motor vehicle,  
8 again a Class 2 felony, looking at all of the  
9 factors in mitigation and aggravation, looking at  
10 the rehabilitation factors as well as the  
11 punishment factors that the Court must look at I  
12 am sentencing this defendant to an extended term  
13 sentence of 9 years in the Department of  
14 Corrections. You will receive credit for all of  
15 the days that you have served in the Lake County  
16 Jail.

17 Mr. Duncan, you do have the right to  
18 appeal. You have the right to request the clerk  
19 to prepare and file a notice of appeal. You have  
20 the right if indigent to be furnished without  
21 cost to you of a transcript of the proceedings at  
22 the trial or hearing. You have the right if  
23 indigent to have counsel appointed on appeal.  
24 The right to appeal the judgment of conviction

Exhibit E

STATE OF ILLINOIS )

) SS

COUNTY OF LAKE )

IN THE CIRCUIT COURT OF THE NINETEENTH  
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS )

vs. )

) GENERAL NO: 04 CF 3749

DARRYL DUNCAN )

)

LIST OF WITNESS

The persons who may be called as witnesses in this case during any hearing or trial are noted below.

North Chicago Police Department

Rinaldi

Triplett

Lawrence

Forensic expert, Northern Illinois Police Crime Lab

Exhibit?

#

D

1082



STATE OF ILLINOIS

COUNTY OF LAKE

)  
) SS  
)

Vasper

IN THE CIRCUIT COURT OF THE NINETEENTH  
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

v.

DARRYL DUNCAN

)  
)  
) GENERAL NUMBER 04 CF 3749  
)  
)

SUPPLEMENTAL ANSWER TO MOTION FOR DISCOVERY

Now comes MICHAEL J. WALLER, State's Attorney, in and for the County of Lake, by and through Kenneth LaRue, Assistant State's Attorney, and supplements the Answer to Motion for Discovery previously filed in the above-captioned cause as follows:

1. Defense counsel is hereby furnished with additional reports initialed KL and numbered 70 through 71.
2. Supplemental witnesses:

\*Officer Furlow, Waukegan Police Department  
\*Officer Poulos, Waukegan Police Department  
Jordan Johnson, 112 Homewood, Libertyville  
Keeper of the Records, Habitat for Humanity, 315 N. Marting Luther King Jr Drive, Waukegan, IL  
\*Donn Wise-Dixon, 223 Belvidere, Waukegan, IL

MICHAEL J. WALLER  
State's Attorney of Lake County

Kenneth W. LaRue  
Assistant State's Attorney

Exhibit:  
D

20P2

Case Description:  
Stolen Auto in Progress/Report

Case Number: 2004-00063963

Bin Loc . . . . :	Disposition . . . :
Vehicle Year: 1990	Description:
Make . . . . : Ford	Model : F350
Color Top . . : BLUE STEEL	Bottom:
License # . . : 20411CV	State : IL
Serial #/VIN: 1FTDE14Y1LHA86014	OAN . . . :
	Style . . : Van
	Interior:
	Expires :

NARRATIVE OCT 08 2004 14:22

Case # 200400063963 created By: POULOST - on: 10/08/2004 2:22:52 PM

On 10/08/04 I was dispatched to 2360 14TH st in reference to a stolen auto report. Upon arrival I spoke to Jordan Johnson. Mr. Johnson told me that he works for Habitat for Humanity and that his company van, previously described, was stolen from the driveway of the home he was working on. He said the keys were in the unlocked van and that it was stolen between 1220 and 1230 pm. Mr. Johnson said that no one else had permission to take the van. He said that only 3 workers were working today and they were all on location.

SUPPLEMENTAL NARRATIVE OCT 09 2004 10:57

Case # 200400063963 created By: FURLWR - on: 10/09/2004 10:57:11 AM

#### E.T. REPORT

LOCATION : GLENROCK AVE / MELROSE AVE ( BIKE-TRAIL )

REFERENCE: RECOVERED / STOLEN AUTO

VICTIM : HABITAT FOR HUMANITY OF LAKE COUNTY

OFFICER WENT TO THE ABOVE LOCATION , IN REGARDS TO A RECOVERED STOLEN AUTO .

OFFICER TOOK EIGHT DIGITAL PHOTOS AT THE SCENE. THEN DUSTED A BLUE 1990 FORD / ECONOLINE 150 VAN BEARING IL / PLATES OF 20411CV FOR LATENT FINGERPRINTS WITH A NEGATIVE RESULT OF ANY COMPARISON.

OFFICER LOCATED NO OTHER EVIDENCE ABOUT THE SCENE FOR COLLECTION.

Note: No Gloves

Exhibit: E

1082

Exhibit: G

the Complaintant

Wednesday, October 20, 2004

Page Number: 1

**North Chicago Police Department**

Description UNLAW POS STOLEN VEH/AGG ASSAULT/RINALDI #50

Date Entered 11:18:28 AM, 10/20/2004 User CECCLA

Case#: 04-029510

## Narrative

ON 10/09/04, OFFICER RINALDI #50 WAS SENT TO RTE 137 TO FIND A COMPLAINANT WHO WAS FOLLOWING THEIR STOLEN BLUE WORK VAN IL LIC # 20411CV. I ARRIVED AND SAW A BLUE WORK VAN EXITING THE MOBIL AT GREENBAY RD & RTE 137 AND HEAD (S) ON RTE 137. I ACTIVATED MY EMERGENCY LIGHTS AND SIREN AS DID OFFICER TRIPLETT, IN OUR MARKED SQUAD CARS. I PULLED IN FRONT OF THE VAN AS IT WAS STOPPED AT A RED LIGHT AT RTE 137 AND GREAT LAKES DR IN THE LEFT TURN LANE, WITH THE MATCHING IL LIC 20411-CV.

OFFICER TRIPLETT PULLED BEHIND THE VAN. I EXITED MY SQUAD AND THE DRIVER OF THE VAN I REMEMBERED AS:

DUNCAN, DARRYL R B/M

DOB 3/18/64

2642 KENNEDY DR

N. CHICAGO

AS I JUST TOOK HIM TO BOND COURT LAST WEEK. DUNCAN THEN STEPPED ON THE GRASS AND ALMOST HIT ME BUT I WAS ABLE TO JUMP ON TP THE HOOD OF MY SQUAD AND GET OUT OF THE WAY. DUNCAN THEN PUT THE VAN IN REVERSE AND TRIED TO RAM OFFICER TRIPLETT'S SQUAD. DUNCAN THEN WENT FORWARD OVER THE MEDIAN AND DID A U TURN THROUGH THE RED LIGHT AND LEADED (L) ON RTE 137. DUNCAN RAN THE RED LIGHT AT GREEN BAY AT A HIGH RATE OF SPEED AND THEN TURNED (N) ON LEWIS FROM RTE 137 TURNING LEFT THROUGH A RED LIGHT. DUNCAN RAN THE STOP SIGN AT 24TH & LEWIS AT A HIGH RATE OF SPEED CONTINUING (N) THROUGH THE RED LIGHT AT ARGONNE SEEMINGLY WITH NO REGARD FOR THE SAFETY OF THE 20+ PEDESTRIANS CROSSING LEWIS TO TAKE THERE KIDS TO FOOTBAL, MAKING THEM RUN AND JUMP INTO THE GRASS FOR SAFETY. DUNCAN RAN THE RED LIGHT AT 10TH & LEWIS AND AT BELVIDERE AND LEWIS TURNING RIGHT HEADING (E) ON BELVIDERE NARROWLY MISSING SEVERAL CARS. DUNCAN CONTINUED AT A HIGH RATE OF SPEED CUTTING THROUGH A GAS STATION ON THE CORNER OF GLEN ROCK AND BELVIDERE TURNING LEFT AND HEADING (N) ON GLEN ROCK NARROWLY MISSING 2 PEOPLE IN THE PARKING LOT OF THE GAS STATION SEEMINGLY THERE TO GET GAS.

DUNCAN TURNED LEFT ONTO THE ROBERT MCCRORY BIKE PATH ALMOST HITTING A MAN ON A BICYCLE. DUNCAN THEN MADE A U-TURN THROUGH THE GRASS AND PULLED THE VAN NEXT TO A CHAIN LINK TOPPED WITH BARBED WIRE. DUNCAN JUMPED OUT OF THE VAN CLIMBED ONTO ITS ROOF, JUMPED THE FENCE AND RAN (W). I RAN TO THE VAN PUT THE GEAR SELECTOR IN PARK CLIMBED ONTO THE ROOF OF THE VAN JUMPED THE FENCE AND FOLLOWED DUNCAN. DUNCAN WAS LATER APPREHENDED BY OFFICER LAWRENCE 250 FEET (W) OF MY LOCATION WHICH WAS 150 FEET (W) OF THE VAN. THE VAN WAS TAKEN OVER BY WAUKEGAN PD AS IT WAS STOLEN OUT OF THEIR CITY. A FEMALE IDED AS:

DIXON-WISE, DIANE B/F

DOB: 4/27/63

223 BELVIDERE

WAUKEGAN WAS A PASSENGER IN THE VAN. DIXON-WISE PROVIDED A VOLUNTARY STATEMENT AND WAS RELEASED. DUNCAN WAS TRANSPORTED TO NCPD BOOKED, CHARGED WITH AGGRAVATED ASSAULT, AGGRAVATED FLEEING & ELUDING, UNLAWFUL POSESSION OF A STOLEN VEHICLE, RESISTING, OBSTRUCTIN, DRIVING SUSPENDED, NO PROOF INSURANCE, NO SEAT BELT, EXPIRED REGISTRATION, SUSPENDED REGISTRATIO. DUNCAN WAS HELD FOR BOND COURT. I CLEARED TAKING NO FURTHER ACTION.

RINALDI, ROBERT #50

Officer Signature (X) \_\_\_\_\_

*No Finger Prints  
No camera*

Exhibit: E

2092

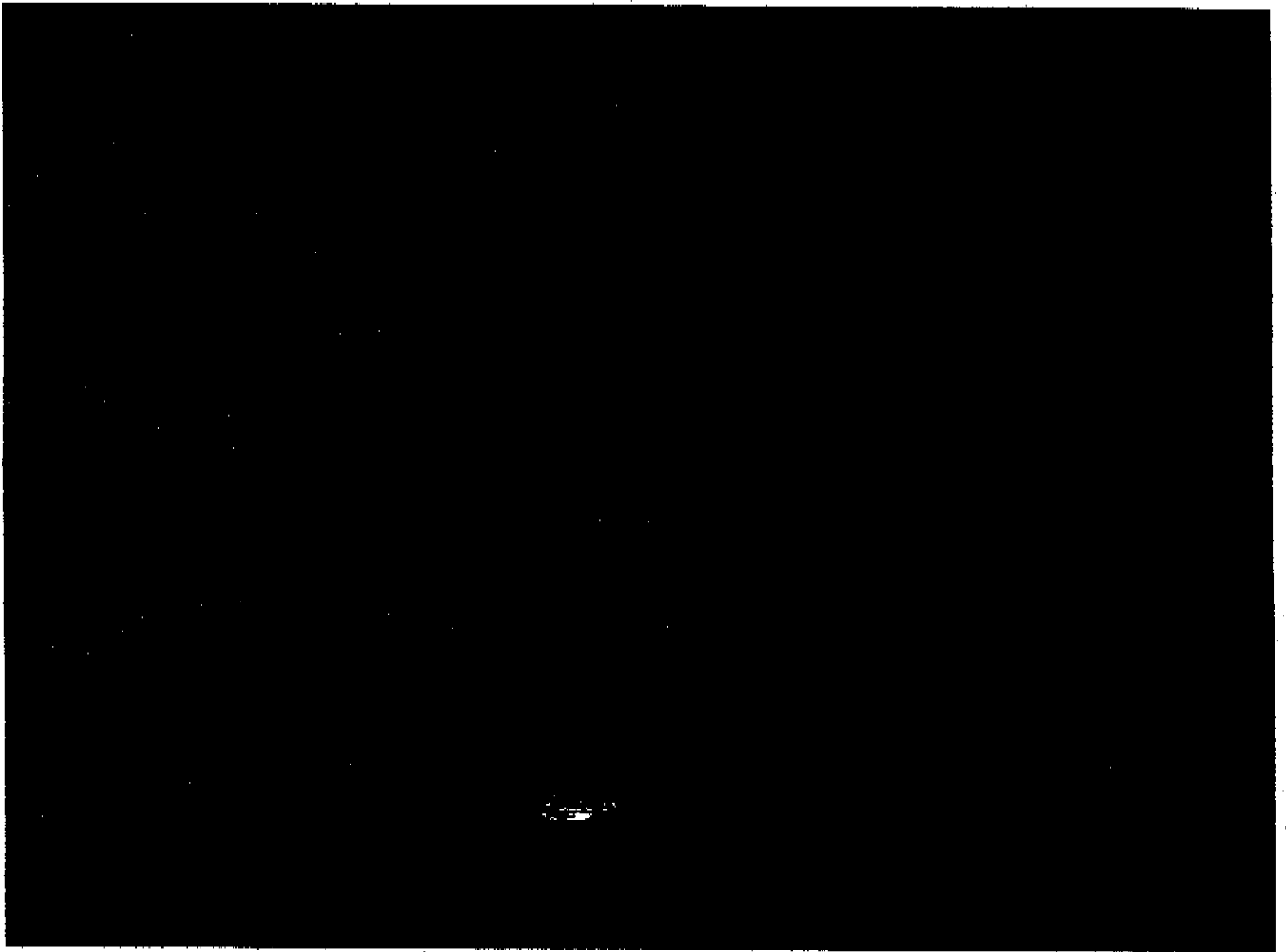


Exhibit: E

1083

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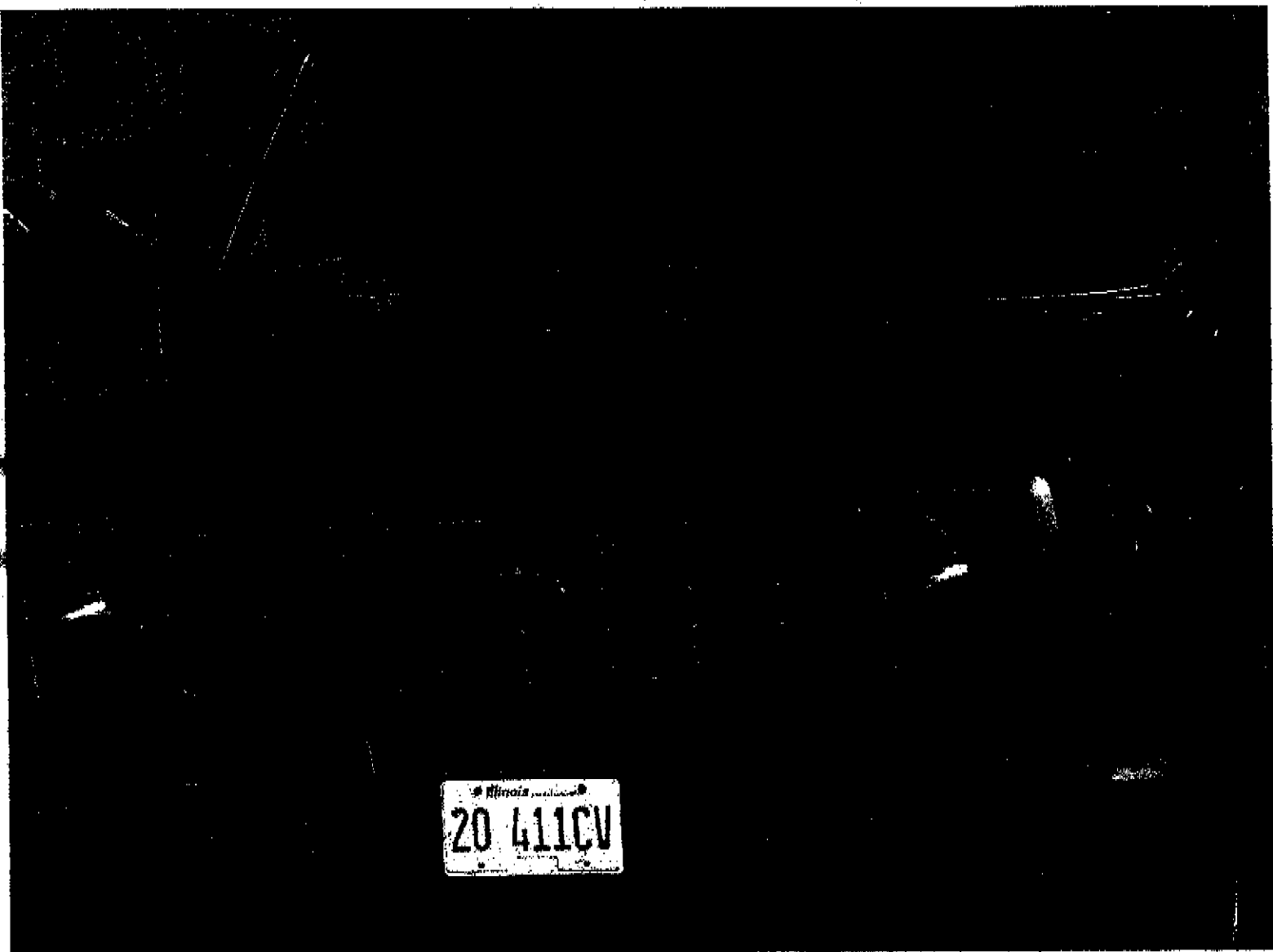


Exhibit: F

2 of 3

4/15

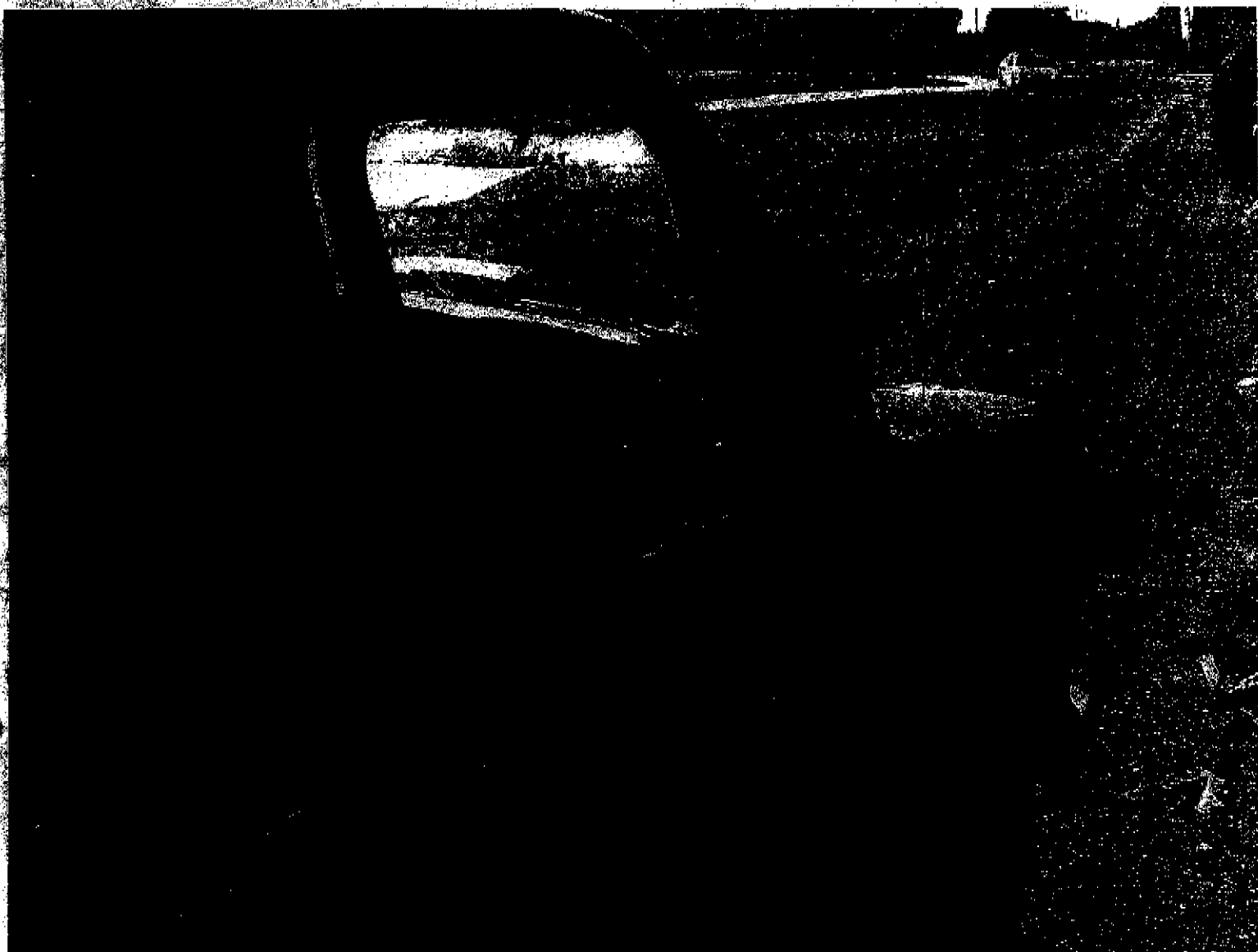


Exhibit F

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STATE OF ILLINOIS       )  
                                  ) SS   GENERAL NO. 04 CF 3749  
COUNTY OF LAKE        )

DCN#: L38831728

OF THE AUGUST 2004 TERM OF THE CIRCUIT COURT  
OF THE NINETEENTH JUDICIAL CIRCUIT COURT OF THE  
COUNTY OF LAKE IN THE STATE OF ILLINOIS

Count 1. That the Grand Jurors chosen, selected and sworn, in and for the County of Lake, in the State of Illinois, having been duly recalled, in the name and by authority of the People of the State of Illinois, upon their oaths present that DARRYL R. DUNCAN, DOB: 3/18/64, hereinafter called the defendant, on or about OCTOBER 9, 2004, in the County of Lake and State of Illinois, committed the offense of UNLAWFUL POSSESSION OF STOLEN VEHICLE, in that the said defendant, a person not entitled to possession of said vehicle, possessed a Blue van of Habitat for Humanity with an Illinois registration number of 20411CV, knowing it to have been stolen, in violation of 625 ILCS 5/4-103(a)(1) contrary to the form of the Statutes in such case made and provided, and against the peace and dignity of the People of the State of Illinois.

FILED

NOV - 3 2004


CLERK

Exhibit # 6  
1092

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Count 2. That the Grand Jurors chosen, selected and sworn, in and for the County of Lake, in the State of Illinois, having been duly recalled, in the name and by authority of the People of the State of Illinois, upon their oaths present that **DARRYL R. DUNCAN, DOB: 3/18/64**, hereinafter called the defendant, on or about OCTOBER 9, 2004, in the County of Lake and State of Illinois, committed the offense of **AGGRAVATED FLEEING A POLICE OFFICER**, in that the said defendant, the driver of a motor vehicle, after being given a visual and audible signals to bring his vehicle to a stop by Officer Rinaldi, a peace officer, attempted to elude Officer Rinaldi, and in so doing, failed to yield to at least two separate traffic control devices, in violation of 625 ILCS 5/11-204.1(a)(4) contrary to the form of the Statutes in such case made and provided, and against the peace and dignity of the People of the State of Illinois.

A TRUE BILL



FOREPERSON

Exhibit # E

2082

First Name DARRYL Last Name DUNCAN DocketNo. 04CF3749, 04TR155522 Page 1

NOTE: THIS INFORMATION IS CONFIDENTIAL  
UNDER LAW AND IS NO OPEN TO PUBLIC  
INSPECTION WITHOUT ORDER OF COURT.

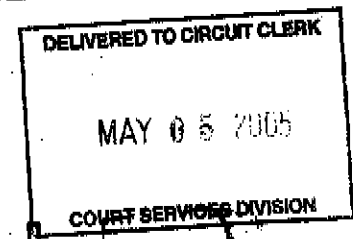
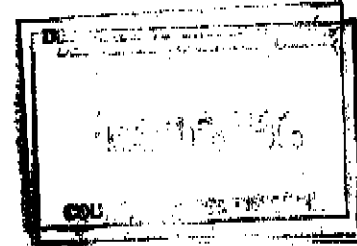
**ADDENDUM****NAME:** DARRYL DUNCAN**CASE NUMBER:** 04CF3749, 04TR155522**COURT DATE:** MAY 6, 2005**JUDGE:** THE HONORABLE VICTORIA ROSSETTI**STATE REPRESENTED BY:** KENNETH LARUE**DEFENSE REPRESENTED BY:** IAN KASPER**HEALTH:****Emotional:**

On April 18, 2005, a mental health evaluation was ordered and this cause was continued to May 6, 2005 for status. The defendant was so referred to Dr. John Dunne of Lake County Psychological Services. Per Dr. Dunne's attached report, the defendant was diagnosed with major depressive disorder (recurrent, mild), an adjustment disorder (with anxiety) and a personality disorder, not otherwise specified (with narcissistic, paranoid and antisocial features). Should his present symptoms become exacerbated, a psychiatric evaluation is suggested to further assess his potential need for psychotropic medications.

Respectfully submitted,

*Dana Paschall*  
DANA PASCHALL  
SENIOR PROBATION OFFICER  
ADULT PROBATION SERVICES

APPROVED BY: /s/ Scott Summers (dp)  
SCOTT SUMMERS, ASSISTANT DIRECTOR



MAY - 5 2005

CIRCUIT CLERK

Exhibit: H

*Exhibit I*  
1083  
**FILED**  
JAN 09 2007

STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF LAKE     )

IN THE CIRCUIT COURT OF THE NINETEENTH  
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

*[Signature]*  
CIRCUIT CLERK

THE PEOPLE OF THE STATE OF ILLINOIS     )  
                                                          )  
                                                          ) vs.                                    ) GEN NO. 04 CF 3749  
                                                          )  
DARRYL DUNCAN                                    )  
                                                          )

### ORDER

This matter coming before the Court on Petitioner's second Pro Se Post-Conviction Petition pursuant to 725 ILCS 5/122-1; the Court having reviewed the Petition, its exhibits and the trial court record, finds as follows:

1. Petitioner was found guilty, after a bench trial, of Unlawful Possession of Stolen Motor Vehicle and sentenced to nine (9) years in the Illinois Department of Corrections. Following the sentencing Petitioner filed a Notice of Appeal.
2. That while the Appeal is pending Petitioner filed his first Pro Se Post-Conviction Petition on November 28, 2005. And on February 17, 2006 the trial court summarily dismissed the Petition.
3. On March 22, 2006 Petitioner filed a Notice of Appeal on the Post-Conviction Petition.
4. On October 3, 2006 Petitioner filed a Motion to withdraw his Appeal which was granted October 11, 2006.
5. Petitioner's claims that his constitutional rights were violated based on the indictment lacking necessary facts to state a charge or failed to prove a criminal

Exhibit I  
2083

act was committed is without merit. These issues could have or should have

✓ been raised on appeal and so are waived. People v. Blair, 215 Ill.2d 427,

831 N.E. 2<sup>d</sup> 604 (Supreme Court 2005)

6. Petitioner's claims of ineffective assistance of counsel are not supported by the trial court record and do not merit the two-prong test of Washington v.

Strickland, 466 U.S. 668, 680 L. Ed.2d 674, 104 S.Ct. 2052 (1984)

Trial counsel's representation did not fall below an objective standard of reasonableness and did not prejudice the defendant. These same allegations were raised in the first Post-Conviction Petition.

7. Petitioner's claims that a fitness hearing should have been ordered are frivolous and patently without merit. The issue could have or should have been raised on appeal.

8. Because this is a successive Post-Conviction Petition the procedural bar of waiver is an express requirement and only when fundamental fairness so requires will the strict application of this statutory bar be relaxed. Claims must meet a "cause and prejudice" test. People v. Pitsonbarger, 205 Ill. 2d 444, 793 N.E. 2d 609, 275 Ill. Dec. 838.

That "cause" refers to any objective factor, external to the defense which impeded the defendant's ability to raise a specific claim in the initial post-conviction proceeding, and the deficiency directly affected his ability to raise specific claims asserted in the second Post-Conviction petition.


9. That Petitioner has not met the cause and prejudice test for each of the claims raised in this second Post-Conviction petition.

Exhibit I  
3083

WHEREFORE, the Petitioner has not raised the gist of a constitutional claim.

THEREFORE, the Court hereby summarily dismisses the Petitioner's Second Post-Conviction Petition.

ENTERED:

  
VICTORIA A. ROSSETTI,  
Circuit Judge

Dated at Waukegan, Illinois  
this 9<sup>th</sup> day of January, 2007



Exhibit J

## Memorandum Of Law

1. The first is that requiring even partial payment by someone who cannot afford to pay the filing fee is an unconstitutional burden on the right of access to the courts. It is true as he argues, that state and federal governments, including the judicial branch may not erect arbitrary or unduly onerous obstacles to suit; *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).
2. It is true that General Order is inconsistent with the Supreme Court's holding in *Adkin v. E.I. Dupont de Nemours & Co.*, 335 U.S. 336, 69 S.Ct. 85, 93 L.Ed. 43 (1948), that litigant need not be totally destitute to qualify for indigent status under 28 U.S.C. § 1915(a). This statute provides: Any court of the U.S. may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, on appeal therein without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor.

1 of 1